

BLANK ROME LLP

Todd M. Malynn (SBN 181595)

todd.malynn@blankrome.com

Arash Beral (SBN 245219)

arash.beral@blankrome.com

Todd M. Malynn (SBN 181595)

jamison.gilmore@blankrome.com

2029 Century Park East | 6th Floor

Los Angeles, CA 90067

Telephone: 424.239.3400

Facsimile: 424.239.3434

Attorneys for Defendants, Counterclaimants, and
Third Party Plaintiffs PCJV USA, LLC, PCI
TRADING LLC, POTATO CORNER LA
GROUP, LLC, GK CAPITAL GROUP, LLC,
NKM CAPITAL GROUP, LLC and GUY
KOREN, and Defendants J & K AMERICANA,
LLC, J&K LAKEWOOD, LLC, J&K
OAKRIDGE, LLC, J&K VALLEY FAIR, LLC, J
& K ONTARIO, LLC, J&K PC TRUCKS, LLC,
HLK MILPITAS, LLC, and GK CERRITOS, LLC

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SHAKEY'S PIZZA ASIA VENTURES,
INC, a Philippines corporation,

Plaintiff,

vs.

Case No. 2:24-CV-04546-SB(AGRx)

Hon. Stanley Blumenfeld, Jr.

**SUPPLEMENTAL
DECLARATION OF GUY KOREN**

Complaint Filed: May 31, 2024

Trial Date: TBD

PCJV USA, LLC, a Delaware limited
liability company; PCI TRADING , LLC, a
Delaware limited liability company; GUY
KOREN, an individual; POTATO CORNER
LA GROUP, LLC, a California limited
liability company; NKM CAPITAL GROUP,
LLC, a California limited liability company;
J & K AMERICANA, LLC, a California
limited liability company; J&K
LAKEWOOD, LLC, a California limited
liability company; J&K VALLEY FAIR,
LLC, a California limited liability company;
J & K ONTARIO, LLC, a California limited
liability company; HLK MILPITAS, LLC, a
California, limited liability company; GK
CERRITOS, LLC, a California, limited
liability company; J&K PC TRUCKS, LLC,
a California limited liability company; and,
GK CAPITAL GROUP, LLC, a California

limited liability company and DOES 1
through 100, inclusive,

Defendants.

PCJV USA, LLC, a Delaware limited
liability company; PCI TRADING LLC, a
Delaware limited liability company;
POTATO CORNER LA GROUP LLC, a
California limited liability company; GK
CAPITAL GROUP, LLC, a California
limited liability company; NKM CAPITAL
GROUP LLC, a California limited liability
company; and GUY KOREN, an individual,

Counter-Claimants,

v.

SHAKEY'S PIZZA ASIA VENTURES,
INC, a Philippines corporation,

Counter Defendant.

PCJV USA, LLC, a Delaware limited
liability company; PCI TRADING LLC, a
Delaware limited liability company;
POTATO CORNER LA GROUP LLC, a
California limited liability company; GK
CAPITAL GROUP, LLC, a California
limited liability company; NKM CAPITAL
GROUP LLC, a California limited liability
company; and GUY KOREN, an individual,

Third Party Plaintiffs,

v.

PC INTERNATIONAL PTE LTD., a
Singapore business entity; SPAVI
INTERNATIONAL USA, INC., a California
corporation; CINCO CORPORATION, a
Philippines corporation; and ROES 1 through
10, inclusive,

Third Party Defendants.

SUPPLEMENTAL DECLARATION OF GUY KOREN

I, Guy Koren, declare as follows:

1. I am over 18 years old. The facts stated here are based on my personal knowledge, my work for PCJV USA, LLC (“PCJV”) and PCI Trading LLC (“PCI Trading”) and all other defendants named in this action (all of which I operate and manage), and my review of files and business records maintained in the ordinary course of our business. If called, I could and would testify competently thereto.

2. I adopt all the facts I attested to in my declaration of last week (filed at Dkt. No. 309-4) and supplement that declaration with the following additional facts.

3. I have reviewed the Supplemental Declaration of Erlinda “Lyndah” S. Bartolome being filed concurrently with our opposition papers. I agree with everything stated and could testify to the facts asserted in them myself if needed. In keeping with a judicious approach, I do not see the need to repeat all of the statements she made. To supplement the context she provided based on my own independent perspective, I add the following facts.

How the Parties’ Intent and Course of Dealing Shaped the Agreements; The Origin of the Ten-Year Term; Duration Was Always Tied to IP Rights

4. Attached to the concurrently-filed Supplemental Appendix at Trial Exhibit No. (“TE”) 1001 is a true and correct copy of an April 2009 email chain between Mr. Magsaysay and me, reflecting our negotiations over the April 2009 “license agreement” with NKM (TE 7), which was in reality an unlawful franchise agreement as we later discovered. From the outset of negotiations, I rejected any at-will or unilateral termination rights by the projected licensor (Cinco had yet to register any trademarks) and insisted that our investment be protected. I expressly objected to language allowing unilateral, discretionary action. Specifically, addressing Paragraph 9 (trademarks), I wrote: “Discontinuance of use of Trademarks should be based upon the agreement. The line: ‘should it become advisable at anytime, in licensor's sole discretion, for licensor to modify or

1 discontinue use of Trademarks' is risky for us as the company that is investing this
2 type of cash on branding and marketing. What is to assure us years from now that
3 we will not loose the license simply due to a better offer by a third party. This clause
4 should be more 2 sided and assure the definite approval of the continuance (given
5 there is no breach) for the whole CA territory." These statements reflect my
6 rejection of any at-will right to discontinue or terminate rights "in licensor's sole
7 discretion," and my insistence on mutuality and continuation absent breach. This
8 was not a matter of legal technicality, but a matter of protecting our investment and
9 ensuring fairness in the relationship.

10 5. Addressing termination (Paragraphs 14 and 15), I required cause or
11 mutual agreement and protection through the end of location leases: "In regard to
12 termination, we are going to have leases that will be minimum 3 years at a time.
13 Termination of trade rights in the middle of a lease contract will create problems for
14 us as the leaseholders. If termination of license is neccessary, the licensee should be
15 able to proceed with business untill the end of the location's lease. Immediate
16 termination should occur only if agreement is breached or is agreed by both parties
17 (because there are costs and penalties to terminating long term leases early, It is
18 risky for us). Reasonable steps have to be taken to reach amicable solution before
19 proceeding with an immediate termination." By this language, I rejected immediate
20 or at-will termination and required termination only for breach or mutual consent,
21 with continued operation through lease terms.

22 6. I also deleted any clause authorizing unilateral takeover by the licensor,
23 writing: "We erased the paragraph that gives rights for the Licensor to take over
24 licensee's operations at any point. In case of the termination the licensor shall take
25 over operations as long as an amicable agreement has been reached by all parties.
26 (our investment has to be protected)." This reflects my rejection of unilateral,
27 discretionary termination or control.

28 / / /

1 7. I further emphasized that the agreement must be “more 2 sided” and that
2 our rights could not be unilaterally altered after we invested substantial resources:
3 “We discussed that this contracts serves as guidelines rather than exact
4 compliance... Somehow we have to make sure that at no point can ‘the rug be
5 pulled from under our feet’. For example few years from now after we have spent
6 thousands of hours and dollars building a brand in CA, a new CEO should be not
7 able to renegotiate other terms. Strict compliance will create countless loopholes
8 with could cause problems for us in the future. Basically making the contract more 2
9 sided.” This demonstrates my rejection of any provision enabling unilateral or at-
10 will changes affecting our rights.

11 8. I obtained some but not all of these concessions, as reflected in TE 7.
12 What is materially important is that the “Term of License” in that document was
13 “for ten (10) years.” In other words, the ten-year term was tied to the use of
14 intellectual property. When it came time to create a lawful franchise system and to
15 negotiate the Joint Venture Agreement (and related agreements thereafter), the
16 parties rejected the ten-year term and made it indefinite—always tying the duration
17 to the intellectual property rights we had negotiated.

18 Trust and Mutuality, Not Legal Formalities, Defined the Partnership

19 9. Attached to the concurrently-filed Supplemental Appendix at TE 1024 is
20 a true and correct copy of a June 2010 email chain with Mr. Magsaysay. In a June
21 14, 2010 email, Mr. Magsaysay made clear that the very foundation of the joint
22 venture partnership was trust—not legal formalities or paperwork. He wrote: “We
23 begun on mutual trust and this will be a key value the JV company shall have. Any
24 person bringing distrust to start a relationship with the JV company should be
25 looked at with concern.”

26 10. Mr. Magsaysay further emphasized that trust was not just a value, but
27 the operative principle guiding the parties’ relationship, even above contracts and
28 legal documentation. He stated: “The time we professionalize and have professional

1 managers running things for us is the time we should let contracts and agreements
2 with lawyers concern be ahead of trust. That's why to those who join our journey at
3 this point when all we have is trust, I value them and their partnership and we
4 should reap the benefits of trusting as blindly.” [sic] This underscores that, at the
5 outset, we deliberately prioritized personal trust and mutual confidence over legal
6 formalities and written agreements. The parties’ conduct and communications
7 consistently reflected this approach.

8 11. In the same email, Mr. Magsaysay tied participation in the joint venture
9 directly to this principle of trust. Regarding Mark Tung’s involvement, he wrote:
10 “At this point Mark is not an officer, owner, shareholder or agent of the JV
11 company. We will not put in the JV agreement about Mark being a non-voting
12 independent director since I am now leaning towards changing my mind about him
13 being part of the board of the JV company when to this point he has not proven, to
14 my satisfaction, that he thinks like us and the LA group (Amit, Guy and Amir).”
15 Our partnership’s foundation was grounded in mutual trust.

16 The Evolution of the JV Agreements and the Centrality of IP Rights

17 12. In 2015–2016, the Cinco Group sought to avoid further capital
18 contributions, DBO exposure, and the governance obligations they had repeatedly
19 resisted. Although we discussed a framework under which the LA Group would
20 receive 100% of PCJV at no cost (with royalty fees based on nationwide revenues),
21 Cinco ultimately did not finalize that deal.

22 13. Our governing documents contained consent and right of first refusal
23 (“ROFR”) protections designed to ensure that only the original parties remained in
24 business together and to prevent outsiders from joining without our consent. Despite
25 these protections, internal turmoil within the Cinco Group—including a private
26 dispute between Mr. Magsaysay and Ms. Bermejo—led to separate transactions
27 with a third-party group. Ms. Bermejo sold all her interests in Cinco and PCI, while
28

1 the other three members sold portions of their interests, resulting in the Hernandez
2 Group acquiring 55% of Cinco and immediately seeking to control PCJV.

3 14. I objected to the fact that our prior consent was not obtained and the LA
4 Group attempted to exercise its ROFR rights. Rather than honor the ROFR, Cinco's
5 new principals (including Myrose Victor) traveled to Los Angeles and ultimately
6 entered negotiations with us regarding a new agreement to restructure PCJV (*see* TE
7 1065 and 1072). These negotiations were always premised on the LA Group
8 waiving its consent and ROFR protections.

9 15. Attached to the Supplemental Appendix at TE 1066 is a true and correct
10 copy of a February 13, 2018 email and term sheet I sent to the new Cinco principals.
11 The email specifically references negotiations about "how best to *restructure* our
12 relationship in the form of a *new* license agreement partnership," and the term sheet
13 proposes "[a] *new* Master Territorial License ..." to "*replace the existing*
14 *relationship*." Emphasis added.

15 16. The next day, on February 14, 2018, Mr. Jacoby and I (both part of the
16 LA Group) had a dispute over the future of PCJV under our 100% ownership. This
17 led to a series of well-documented events in which the new Cinco principals
18 surreptitiously attempted to remove me from PCJV under pretext. The pretext was
19 that I had improperly moved PCJV's money from one bank did to another, which I
20 did to safeguard the funds from Mr. Jacoby. I was completely transparent and even
21 sent Mr. Magsaysay a letter on April 3, 2018 explaining what I did. Attached to the
22 Supplemental Appendix at TE 1073 is a true and correct copy of that letter. (Of
23 interest, the letter also notes that I transferred the accounts of "all the Company
24 stores to Chase," which further evidences the agreement of the parties to treat my
25 stores as "Company stores" from which PCJV was not obligated to collect IP
26 royalties.)

27 ///

28 ///

1 17. During those proceedings, I relied on the October 16, 2012 meeting
2 minutes and the First Amendment to vindicate my rights—specifically, that I could
3 not be removed without a 75% vote of managers.

4 18. After I objected and attempted to enforce my and the LA Group’s
5 consent and ROFR protections, Cinco and its counsel argued that a sale of stock
6 “upstream” in Cinco itself would not trigger any ROFR or consent rights because no
7 membership interest certificates in PCJV (allegedly held through PCI) changed
8 hands. When it became clear that this argument was contradicted by the evidence—
9 since Bermejo had transferred her direct shares in PCI as well as Cinco—they
10 reversed the PCI transaction, having Bermejo’s share go to Cinco instead of
11 Hernandez. This maneuver was also a ruse.

12 19. The Hernandez Group’s motivations were economic and strategic: to
13 extract value immediately from the U.S. venture while preventing me from
14 purchasing only the U.S. piece via our ROFR, using a formula we had already
15 negotiated with the original Cinco Group members. The result was exactly what our
16 ROFR and consent clauses were designed to prevent: outsiders—Hernandez and his
17 associates—asserting dominion over PCJV without our consent and without first
18 offering us the opportunity to purchase the interest being conveyed. Thankfully, the
19 state court enjoined that misconduct.

20 20. At no point during the state court litigation did I or my attorneys ever
21 take the position that Cinco exited our joint venture partnership or from PCJV, or
22 was no longer part of PCJV by virtue of the First Amendment. On the contrary, we
23 always maintained that Cinco was a party. For example, attached to the
24 Supplemental Appendix as Exh. “AA” is a true and correct copy of the transcript of
25 an October 8, 2020 hearing in state court regarding a motion for summary
26 adjudication that we filed. I was present in the courtroom for that hearing, which
27 was the last in state court involving any contested issue over the ROFR and Cinco’s
28 status as a party. During that hearing, my attorney (Mr. Beral) argued that, even

1 assuming PCI and Cinco had furnished an assignment to us (which they never did),
2 PCI only held an economic interest in PCJV at best by virtue of the transfer
3 restrictions placed in the LLC Agreement, while the Cinco Group members retained
4 their rights to vote and manage (which constitute ownership rights). He further
5 noted that the parties' intent was for the individuals to remain bound by the ROFR
6 and management rights, and that the use of "Cinco" rather than "PCI" in documents,
7 as well as the lack of evidence of an actual assignment, reinforced that PCI was not
8 treated as the true member in practice.

9 21. I was present at the October 16, 2012 meeting and personally observed
10 the discussions over the agreements we made that day, as reflected in the board
11 meeting minutes (TE 1052). Specifically, when we removed Amit Nemanim from
12 the LA Group and made me PCJV's President, the managers gave me the additional
13 protection that a 75% vote of managers would be required to remove me in the
14 future. The First Amendment reflects this reality and was the operative agreement
15 giving me those additional protections.

16 22. In 2018, after the then-new principals of Cinco voted to remove me,
17 Cinco passed a resolution to modify the LLC Agreement. During the state court
18 proceedings, Cinco took the position that the Joint Venture Agreement and/or the
19 LLC Agreement served as the operative license agreement entitling Cinco to 30% of
20 collected royalties, while at the same time arguing that the First Amendment lacked
21 a "meeting of the minds." There were ongoing disputes over which documents—or
22 even whether verbal or implied-in-fact agreements—actually governed PCJV.
23 Ultimately, these disputes were resolved through our settlement agreement (TE
24 1172). In that settlement, all parties expressly agreed that all of the prior agreements
25 govern PCJV, "including" (but not limited to) the JVA, its First Amendment, and
26 the LLC Agreement. *See* TE 1172 at Recital B. Recital B is a definitive, mutually
27 agreed statement, whereas Recital G contains only Cinco's representations (which
28

1 we did not adopt or concede as factually accurate). *See* TE 1172 at Paragraph 8; *see*
2 *also* Recital G (“Cinco represents that ... Cinco further represents that”).

3 23. In addition to agreeing in Recital B that “PCJV is governed by a set of
4 agreements, including ...,” the parties specifically carved out “Excluded Claims”
5 from the release, preserving our damages claims and the right to seek declaratory
6 relief against Cinco (including any alter ego claims) “arising out of the sale of
7 Potato Corner IP to SPAVI.” If PCI is determined to be Cinco’s alter ego, then
8 Cinco remains subject to those claims and was not released from liability.

9 The Declaration of Yiow Leong Tan Confirms that Cinco Was a Party

10 24. As I explain further below, I completely disagree with Plaintiff’s
11 narrative that I was negotiating with Plaintiff to obtain rights that I believed we did
12 not already possess. That is simply not true. We already had those rights; my only
13 goal was to negotiate a peaceful resolution based on us relinquishing rights we
14 already held and to reach a peaceful coexistence with new Potato Corner
15 international operators. The contemporaneous documents and course of dealing
16 confirm this intent.

17 25. Even setting aside my disagreement, the Declaration of Yiow Leong
18 Tan itself demonstrates that Plaintiff considered Cinco to be a party to the relevant
19 arrangements. For example, in Paragraph 30, Mr. Tan states that he had two
20 objectives, one of which was for SPAVI to serve “as a franchisor to PCJV (*which is*
21 *how Cinco structured its relationship with PCJV*).” Emphasis added. Further, in
22 Paragraph 37.c., Mr. Tan explains that he wanted Plaintiff to offer resources,
23 including “stepping into the shoes of PCJV and becoming the domestic franchisor
24 ... or entering into a new agreement *structured similar to that which PCJV had with*
25 *Cinco*, wherein SPAVI would be directly involved in the management and
26 operations of PCJV, but Koren would also be serving as an executive.” (Emphasis
27 added.) These statements confirm that, even from Plaintiff’s perspective, Cinco was
28 a party to the operative relationship with PCJV.

1 Settlement Negotiations Focused on Future Arrangements, Not Alleged Past
2 Defects

3 26. Plaintiff has sought to mischaracterize our mediation and settlement
4 protected negotiations with Cinco and SPAVI during the state court lawsuit. Even
5 disregarding settlement and mediation protections, those negotiations were never
6 about remedying a supposed defect in prior agreements. Instead, we were always
7 focused on negotiating a new agreement and a new partnership structure for the
8 future. Attached to the Supplemental Appendix as TE 26, for example, is a true and
9 correct copy of my February 16, 2024 email to Plaintiff where I discuss scheduling
10 a meeting “to discuss the terms of a new license agreement” and to “get on the same
11 page and agree on the terms of a new license agreement that’s mutually acceptable
12 that will serve as the foundation of a new healthy partnership that can and will grow
13 and strengthen for years to come!”

14 27. Attached to the Supplemental Appendix as TE 21 is a true and correct
15 copy of a prior email I sent to Plaintiff with a “Proposed Term Sheet” clearly stating
16 that it is being sent “[i]n connection with our settlement discussions ...” That Term
17 Sheet is also premised on us acquiring Cinco Group’s and SPAVI’s interests in
18 PCJV and PCI Trading. We specifically defined “Philippines-based parties” as
19 including all those parties. *See* Term Sheet at Fn. 1. We always were in the dark on
20 who owned the interests, and Cinco and SPAVI always refused to share information
21 or documents with us.


22 28. Indeed, our goal always was to achieve a global resolution. For over two
23 years, we diligently negotiated through Mr. Murphy who represented all parties. We
24 never abandoned any discussions, “caused the negotiations to fail,” nor did we
25 “vanish for months.” *See* Dkt. 312 at 22:11-13. The record shows we consistently
26 and diligently engaged in good faith to reach a global resolution. *See* Dkt. 48-2,
27 Paragraphs 14-34. That filing also explained the multiple times we made it known
28 that we maintain perpetual rights. To claim that we “never objected to the

1 transaction” (Dkt. 312 at 21:19) is flat wrong. The negotiation process began with
2 us objecting to the transaction. TE 1354.

3 29. Attached to the Supplemental Appendix at TE 1421 and 1355 are true
4 and correct copies of my Verified Third Amended Cross-Complaint in state court,
5 and Cinco’s Verified Answer to that pleading, respectively. Mr. Magsaysay signed a
6 verification on behalf of Cinco on June 9, 2020 in connection with Cinco’s Verified
7 Answer. Of note:

- 8 a. At Paragraph 85, Cinco stated under oath that the Master Services
9 Agreement was properly entered.
- 10 b. At Paragraph 143, Cinco admitted the truth of all of the
11 statements made in the 2018 FDD.
- 12 c. At Paragraph 144, Cinco admitted the truth of the statements
13 made in the 2018 FDD concerning royalty waivers and related
14 statements in the audit portion of the 2018 FDD.

15 I declare under penalty of perjury that the foregoing is true and correct.
16 Executed September 29, 2025, within the United States, its territories, possessions,
17 or commonwealths.

18 DocuSigned by:

D007772E136E459...

19
20
21
22
23
24
25
26
27
28
Guy Koren